IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.1221/1996
(Vikas Adhikari, Taranagar Vs. Ranjet Singh & Ors.)

Date of order : 4.12.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.N. Tiwari, Dy. Govt. Advocate.
Mr. Ravi Bhansali, for the respondent No.1.

By way of filing the present writ petition, the petitioner – Vikas Adhikari, Panchayat Samiti Taranagar, District Churu has challenged the award dated 16.11.1994 passed by Judge, Labour Court, Bikaner whereby the Judge, Labour Court while quashing the termination of the respondent-workman held that the respondent-workman is entitled for reinstatement in service but shall not be entitled for wages till 18.6.1990.

According to the facts of the case, the respondent-workman was appointed as pat time Class-IV employee on 29.9.84 and he worked as such till his

termination w.e.f. 15.5.1989 and he was paid salary has part time employee whereas he was performing duties for whole of the day. After retrenchment of the respondent-workman, he raised an industrial dispute before the conciliation officer and after failure of the conciliation proceedings, the matter was sent to the appropriate Government for making reference to the Judge, Labour Court. The appropriate Government referred the matter to the Judge, Labour Court, Bikaner for adjudication. The reference was made vide notification dated 29.9.1992, which reads as under :

> "क्या श्रमिक रणजीत सिंह पुत्र श्री चेतराम जाति प्रजापत निवासी सात्यू तहसील तारानगर जिला चुरू की नियोजक विकास अधिकारी, पंचायत समिति तारानगर जिला चुरू द्वारा दिंनाक 15-5-89 को सेवा पृथक करना कहाँ तक उचित एवं वैध है ।
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> यदि नहीं तो श्रमिक किस राहत एवं राशि को पाने का अधिकारी है"

After receiving reference from the appropriate government, the Judge, Labour Court, Bikaner issued notice to the workman as well as to the petitioner-employer. The respondent workman while filing his claim submitted before the Judge, Labour Court that he was initially appointed on 29.9.84 as class-IV employee on daily rate basis and he continued upto 15.5.89 and without assigning any reasons or

complaint against him, his services were retrenched w.e.f. 15.5.89 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereafter "the Act" only) under which the petitioner was under obligation to give notice as well as compensation as per the provisions of Section 25-F (a) and (b) of the Act. It was further submitted that at the time of termination of his services, the petitioner-employer has violated the provisions of Section 25-G of the Act and junior persons were allowed to work and his services were dispensed with. In para-7 of the claim, it was specifically stated that he was paid salary as part time employee and a claim was filed by him before the Minimum Wages Authority and the said claim was registered as Claim Case No.8/90 and the same was decided on 30.8.91 whereby the learned Minimum Wages Authority passed an order for payment of salary as daily rate employee to him and that order is still in existence and it has not been set aside, therefore, his termination is illegal.

By way of filing reply to claim before the Judge, Labour Court, it was specifically stated by the petitioner-Department that respondent-workman was not appointed as regular class-IV employee as there was no post in existence. Likewise, he did not work continuously and he was pat time employee and was paid Rs.180/- pr month. It was also stated in the reply

that the petitioner-Department was taking work from him for only four hours in a day, therefore, he cannot be treated to be a regular employee. Therefore, according to the petitioner-Department, there was no question of compliance of provisions of Section 25-F of the Act and the respondent cannot be termed as workman as provided under Section 2 (j) of the Act.

Learned Dy. Govt. Advocate vehemently argued that the award passed by Judge, Labour Court is totally illegal and without appreciation of evidence on record. It is contended that part time employee cannot be termed as a workman, so also, for termination of services of such employee, there is no question of applicability of provisions of Section 25-F of the Act. Therefore, the Judge, Labour Court has failed to consider all these aspects of the matter. Hence, the finding arrived at by Judge, Labour Court is perverse and contrary to record of the case.

I have perused the record of the case.

It is apparently clear from the pleadings that the respondent-workman was appointed on 29.9.84 and he was paid salary as part time employee but later on he made a claim before the Minimum Wages Authority and prayed for minimum pay, which is to be paid to the daily rate employee and after considering all aspects of the matter, the authority under the Minimum Wages

Act passed orders on 30.8.91 whereby the petitioner department was directed to pay wages to the respondent-workman as daily rate employee and this order was in existence at the time of adjudication by Judge, Labour Court. Before this Court also, it is no where stated that the order dated 30.8.91 has been set aside in appeal or not. Therefore, admittedly, the respondent-workman was daily rate employee and he worked for more than 240 days which is evident from the finding of the Judge, Labour Court, which is based on evidence.

In these circumstances, it is obvious that for valid retrenchment, the petitioner department was under obligation to comply with the provisions of Section 25-F of the Act but it has not been complied with. In my opinion, the finding of Judge, Labour Court does not require any interference under Articles 226 and 227 of the Constitution of India because findings are based on evidence and facts of the case and it has rightly been considered by Judge, Labour Court. In these circumstances, I see no reason to interfere with the award impugned, which is under challenge. Hence this writ petition is dismissed. However in the interest of justice and on the basis of principle of “No Work - No Pay”, the award passed by Judge, Labour Court with regard to granting of back wages to the respondent-workman from the date of termination to the date of passing of award is set

aside. However, the respondent-workman will be entitled for back wages with effect from the date of passing of award by the Judge, Labour Court, Bikaner.

(GOPAL KRISHAN VYAS), J.

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